

A World Environment Organization

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INTRODUCTION

This article explores the idea of bolstering international environmental governance by centralizing the current system under one umbrella institution. The idea received important backing in June 1997 at the United Nations General Assembly Special Session when political leaders in Brazil, Germany, Singapore, and South Africa, joined together in a "Declaration" for a Global Initiative on Sustainable Development.¹ That joint Declaration had been spurred by a proposal at a Rio+5 Forum held earlier that year.² A key point in that Declaration was that "the establishment of a global environmental umbrella organization of the United Nations (U.N.) with the United Nations Environment Programme (UNEP) as a major pillar should be considered. While this Declaration did not meet with enthusiasm at the Special Session, it energized long-time advocates of such a reform and catalyzed policymakers to acknowledge the need to think more systemically about the defects of global environmental institutions. In the following four years, governments introduced some new institutions and initiated a dialogue about more fundamental changes.

In August 2002 in Johannesburg, there will be a World Summit on Sustainable Development, which will follow up the Special Session of 1997 and the U.N. Conference on Environment and Development of 1992.³ Many observers anticipate that the topic of the organization of environmental governance will be reviewed at the Summit and that significant decisions may be made. As Urs Thomas has noted, "there is presently a certain institutional effervescence in the air."⁴

The organization of environmental governance can be an important factor in determining the success of these efforts. Policymakers, therefore, need to address this management challenge. Like a city that does not have zoning ordinances, environmental govern-

1. Federal Chancellor Helmut Kohl, Germany; President Fernando Henrique Cardoso, Brazil; Deputy President Thabo M. Mbeki, South Africa; and Prime Minister Goh Chok Tong, Singapore, Declaration on the occasion of the Special Session of the United Nations General Assembly on June 23, 1997 in New York (on file with author).

2. Maurice Strong, Interview with Geoffrey Lean, *Remaking Industrial Civilization*, 9 OUR PLANET, No. 1, 1997, at 9, 11.

3. See World Summit on Sustainable Development, at <http://www.johannesburgsummit.org> (last visited Feb. 17, 2002).

4. Urs Thomas, *Improving Integration Between the WTO and the U.N. System*, BRIDGES, October 2000, at 13, available at <http://www.ictsd.org>.

ance spreads out in unplanned, incongruent, and inefficient ways. While there is no one model for a world environment organization that would be the panacea, a decided movement toward a more centralized system is needed.

The idea of an international agency for the environment is by no means new. The attention to the environment in the early 1970s led some analysts to propose the establishment of an international agency. In a lead article in *Foreign Affairs* in April 1970, George Kennan proposed an "International Environmental Agency" as a first step toward the establishment of an "International Environmental Authority."⁵ One of the most comprehensive proposals in that era was developed by Lawrence David Levien, who called for a "World Environmental Organization," modeled on the practice of the International Labour Organization (ILO) which had been created in 1919.⁶ The establishment of UNEP by the U.N. General Assembly in 1972 settled the organizational question, although some observers at the time viewed the answer as unsatisfactory.⁷ It was not until a generation later, in the run-up to the Rio Conference of 1992, that dissatisfaction with UNEP and the seeming opportunity of institutional change, sparked new initiatives for a better structure of environmental governance.

The most important suggestion came from Sir Geoffrey Palmer, the former Prime Minister of New Zealand, who advocated new methods of making environmental law and called for action at the Rio Conference to establish a specialized U.N. agency for the environment.⁸ Palmer proposed the creation of an "International Environment Organization" borrowing loosely from the mechanisms of the ILO.⁹ Palmer saw an opportunity for a "beneficial restructuring" of the world's environmental institutions, that "would involve cutting away existing overlaps in international agencies."¹⁰ No such action was taken at the Rio Conference, which instead

5. George F. Kennan, *To Prevent A World Wasteland: A Proposal*, 48 FOREIGN AFF. 401, 411-12 (1970).

6. Lawrence David Levien, *A Structural Model for a World Environmental Organization: The ILO Experience*, 40 GEO. WASH. L. REV. 464 (1972).

7. TONY BRENTON, *THE GREENING OF MACHIAVELLI: THE EVOLUTION OF INTERNATIONAL ENVIRONMENTAL POLITICS* 47-49 (1994).

8. Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT'L L. 259 (1992).

9. *Id.* at 280.

10. *Id.* at 282.

called for the creation of the Commission on Sustainable Development (CSD) and for "an enhanced and strengthened role for UNEP and its Governing Council."¹¹

Within a couple of years, new support for institutional change came from a different direction—the international debate on "trade and the environment," which had been rekindled in 1990 and was in full swing by 1993. Both camps in this debate saw the weak state of the environmental regime as a fundamental concern. The environmentalists yearned for an international agency that could stand up to the General Agreement on Tariffs and Trade (GATT), which they saw as a threat to environmental measures. The trade camp, meanwhile, wondered whether a better environmental regime might spur the use of appropriate instruments for environmental protection such as domestic taxes and regulations, rather than putatively inappropriate instruments such as discriminatory trade measures that may not attack a problem at its roots.

With one foot in both camps, Daniel C. Esty, now a professor of law at Yale University, became a champion of a new international environmental organization. His article "GATting the Greens" contended that solving the trade and environment conflict would necessitate not only a greening of trade rules, but also a stronger organization of environmental governance.¹² Esty proposed the GATT as a good model for an environmental institution. In 1994, Esty optimistically named his proposed institution the Global Environmental Organization (GEO)¹³ and, in a series of studies, he strengthened the environmental arguments for institutional change by showing how the level of concerted action needs to match the level of the externality.¹⁴ In 1998, Esty began the Global Environmental Governance Project at Yale, and has since organ-

11. U.N. DEP'T OF PUBLIC INFORMATION, AGENDA 21: PROGRAMME OF ACTION FOR SUSTAINABLE DEVELOPMENT, chs. 38.11, 38.21, U.N. Doc. ST/DPI/1344, U.N. Sales No. E.93.I.11 (1993).

12. Daniel C. Esty, *GATting the Greens, Not Just Greening the GATT*, FOREIGN AFF., Nov.-Dec. 1993, at 32. When he wrote this article, Esty was a resident fellow at the Institute for International Economics. He had previously served in the Environmental Protection Agency with responsibility for international trade issues.

13. Daniel C. Esty, *The Case for a Global Environmental Organization*, in MANAGING THE WORLD ECONOMY 287 (Peter B. Kenen ed., 1994).

14. Daniel C. Esty, *The Value of Creating a Global Environmental Organization*, ENVIRONMENT MATTERS, 2000, at 13, available at <http://www-esd.worldbank.org/envmat/vol00/toc.htm>.

ized a series of study groups to improve understanding of the proposals for change.¹⁵

Ford Runge was another early advocate of institutional reform. In 1994, he called for a World Environmental Organization (WEO) to give a stronger "voice" to environmental concerns.¹⁶ Runge suggested that a new organization could serve as a "chapeau" to the growing number of international environmental treaties.¹⁷ In his most recent study, Runge argues that a GEO could alleviate environmental pressure on the World Trade Organization.¹⁸

The ranks of academic advocates for a World Environment Organization (WEO) have expanded in recent years. Rudolf Dolzer, for example, has proposed a global environmental authority "with the mandate and means to articulate the international interest in an audible, credible and effective manner . . ." ¹⁹ Frank Biermann, a research fellow at the Potsdam Institute for Climate Impact Research, has provided the most systematic analysis of what a WEO would do.²⁰ Economists John Whalley and Ben Zissimos have defined an economic role for a WEO.²¹ Peter Haas has advocated a Global Environmental Organization (GEO) to centralize support functions like research, technology databases, and training for the various environmental regimes.²² Jeffrey Frankel argues that UNEP "is so weak an institution that it should be replaced from scratch."²³ The German Advisory Council on Global Change has

15. See Global Environmental Governance Dialogue, at <http://www.yale.edu/gegdialogue> (last visited Feb. 17, 2002).

16. C. FORD RUNGE, *FREER TRADE, PROTECTED ENVIRONMENT* 100-01 (1994). Runge is a professor of applied economics at the University of Minnesota.

17. *Id.* at 105.

18. C. Ford Runge, *A Global Environment Organization (GEO) and the World Trading System*, 35 J. WORLD TRADE 399, 422 (2001).

19. Rudolf Dolzer, *Time for Change*, 9 OUR PLANET, No. 1, 1997, at 19, 20. Dolzer is the director of the Institute for International Law at the University of Bonn.

20. Frank Biermann, *The Case for a World Environment Organization*, 42 ENV'T, Nov. 2000, at 23, 26-29.

21. John Whalley & Ben Zissimos, *Trade and Environmental Linkage and a Possible World Environment Organisation*, 5 ENV'T & DEV. ECON. 510 (2000). Both authors do research at the Centre for the Study of Globalization and Regionalisation at the University of Warwick.

22. Peter M. Haas, *Environment: Pollution*, in *MANAGING GLOBAL ISSUES. LESSONS LEARNED* 310, 346 (P.J. Simmons & Chantal de Jonge Oudraat eds., 2001). Haas is a professor of political science at University of Massachusetts.

23. Jeffrey A. Frankel, *Assessing the Efficiency Gains from Further Liberalization*, in *EFFICIENCY, EQUITY, AND LEGITIMACY: THE MULTILATERAL TRADING SYSTEM AT THE MILLENNIUM* 81, 96 (Roger B. Porter et al. eds., 2001). Frankel is a professor of economics at the Kennedy School of Government at Harvard University.

recommended that UNEP be upgraded into an International Environmental Organization as a separate entity or a specialized agency within the U.N. system.²⁴ The Council points out that this step might not suffice to remedy the deficits it sees, and suggests consideration of another proposal that would involve integrating various environmental agreements and their Conferences of the Parties into a common framework convention establishing an International Environmental Organization.²⁵

Proponents of a WEO received a boost in June 2001 when the U.N. High-Level Panel on Financing for Development (the Zedillo Commission) proposed, "[t]he sundry organizations that currently share responsibility for environmental issues should be consolidated into a Global Environmental Organization."²⁶ The Commission's report, however, was disappointingly thin on a proposed design for such an organization or its exact rationale.

Some environmental experts, the leading ones being Calestous Juma and Konrad von Moltke, have challenged WEO advocates.²⁷ In recent articles, Juma has argued that the advocates of a WEO have produced "no compelling organizing principle, clear design concept, or realistic plan" and have failed to explain how new institutions would operate better than existing ones.²⁸ Juma further criticizes a WEO as being inherently bureaucratic and contends that centralization is a "peril" in an era of decentralization.²⁹ He also warns that "the debate on creating a new agenda diverts attention from more urgent tasks,"³⁰ such as cutting pollution, protecting wildlife, and other domestic efforts. Von Moltke has also

24. GERMAN ADVISORY COUNCIL ON GLOBAL CHANGE, *WORLD IN TRANSITION: NEW STRUCTURES FOR GLOBAL ENVIRONMENTAL POLICY* 176-77 (2001), available at <http://www.wbgu.de>.

25. *Id.* at 177.

26. *Letter from Secretary-General Transmitting Report of the High-level Panel on Financing for Development (Zedillo Panel)*, U.N. GAOR, 55th Sess., at 26, U.N. Doc. A/55/1000 (2001), available at http://www.un.org/reports/financing/full_report.pdf.

27. Juma was the head of the Secretariat of the Convention on Biological Diversity and is now a researcher at Harvard University. Von Moltke is perhaps the most esteemed analyst of environmental policymaking, and is now a fellow or professor at several institutions including Dartmouth College.

28. Calestous Juma, *Stunting Green Progress*, *FIN. TIMES*, July 6, 2000, at 15; Calestous Juma, *The Perils of Centralizing Global Environmental Governance*, *ENVIRONMENT MATTERS*, 2000, at 13, available at <http://www-esd.worldbank.org/envmat/vol00/toc.htm> [hereinafter Juma, *Perils*].

29. Juma, *Perils*, *supra* note 28.

30. *Id.* at 15.

expressed skepticism that a WEO would help in solving current problems, but has been less definitive in his criticism.³¹ While emphasizing the need for change, he has underlined the impracticality of a true WEO.³²

This debate on the organization of the international environmental regime is important, and yet the interchange has not been fully satisfactory. This article attempts to provide a synthesis of the key points on both sides. In this author's opinion, the weight of the evidence is on the side advocating major organizational change.

The article will proceed in three parts. Part I will present a case for a WEO of moderate centralization. Part II will discuss the structure and functions of a WEO. Part III concludes.

I. WHY A WEO IS NEEDED

One point is agreed to by all of the participants in the debate over environmental governance—current environmental policies are inadequate to address the ecological threats. Thus, the debate is not about the need for more concerted international action, but rather about the utility and practicality of a more centralized management structure for solving these problems. Part I identifies the key tensions that underlie this debate. The most important is that while the fragmentation of current environmental governance has disadvantages, it may also have advantages in spurring the continuous institutional innovation that has distinguished the environmental regime from many others. Another concern is that environmental issues are disparate and so the benefits of consolidating them will be uncertain. Yet, while those skeptics of a world environment organization have pointed out these uncertainties, they have not (von Moltke excepted) offered any alternative organizational solutions.

Part I of this article has four sections: Section A discusses the terms "WEO" and "centralization" to provide greater clarity and to note other terms in use. Section B explains why a fully centralized WEO is not a realistic possibility. Section C presents some factors to consider in deciding whether a WEO would be a good idea at all. Section D presents a positive case for establishing a

31. Konrad von Moltke, *The Organization of the Impossible*, 1 GLOB. ENVTL. POL. 23 (2001).

32. *Id.* at 24–27.

WEO.

A. Note on Terminology

This article will employ the term "World Environment Organization" and its acronym "WEO." Since the establishment of the World Health Organization (WHO) in 1946, many international agencies have been named with the modifier "World" in the organization's title. Examples include the World Health Organization (WHO), the World Meteorological Organization (WMO), the World Intellectual Property Organization (WIPO), the World Tourism Organization and the newer World Trade Organization (WTO).³³ Indeed, calling an organization "World" connotes a universality that can be an appropriate means of identifying it as an internationally oriented institution. It was the Chinese government that had the inspiration of naming the new health organization a "World" agency.³⁴

Nevertheless, it should be said that the modifier "World" is not the only option for naming a new international environmental organization. An alternative approach would be to create a "Global Environment Organization," with the acronym "GEO."³⁵ The prefix Geo- means relating to earth or land³⁶ and, as such, is a term that the public can readily understand and identify with environmental causes. Esty, who invented the acronym GEO, argues that the new organization should be limited to global or international-scale problems, as opposed to localized or omnipresent problems.³⁷ One can disagree with that limitation and still see the wisdom of using the term GEO because the public may warm up to this name far more than the term "wee-oh".

This article will employ the word "centralized" in describing a WEO because that is the term generally used in the debate about bringing the disparate international environmental agencies and

33. See UNITED NATIONS HANDBOOK 2001, at 378.

34. Walter R. Sharp, *The New World Health Organization*, 41 AM. J. INT'L L. 509, 528 (1947).

35. A recent policy paper published by the German Advisory Council on Global Change adopts the term GEO in its recommendation. GERMAN ADVISORY COUNCIL ON GLOBAL CHANGE, *THE JOHANNESBURG OPPORTUNITY: KEY ELEMENTS OF A NEGOTIATION STRATEGY* (2001), at 5.

36. THE AMERICAN HERITAGE BOOK OF ENGLISH USAGE (1996), ch. 8 § 19, available at <http://www.bartleby.com>.

37. Dan Esty, *An Earthy Effort*, WORLDLINK, Sept./Oct. 2000, at 14, 15.

treaties together under one umbrella agency.³⁸ Nevertheless, it should be recognized that advocates of a WEO are not proposing full centralization, for example by arguing that all environmental governance needs to be in one building or in one organizational entity, or that all environmental governance mechanisms that exist in each country and city in the world need to be centralized and directed from the top. Indeed, one of the advocates of moving toward "an overarching, coherent international structure," Michael Ben-Eli, has explicitly said that he favors a "decentralized approach."³⁹ Perhaps some of the reaction against a WEO comes from analysts who are reading too much into the term centralization.

The WEO proposal would be most accurately called a consolidation, as the myriad, disconnected organizational boxes of global environmental governance would be consolidated into fewer boxes with more networking among the entities. Environmental governance probably would not have one center, but could be polycentric with foci for different functions.

B. Full Centralization Is Impossible

If centralization is the aim, why not create a single WEO that consolidates all international environmental institutions under one umbrella? Such a complete organization could comprise UNEP, the 300-plus multilateral environmental agreements (MEAs), the WMO, the Global Environment Facility (GEF), the pollution control programs of the International Maritime Organization (IMO), the International Tropical Timber Organization, the Intergovernmental Forum on Forests, the fishery and forestry programs from the U.N. Food and Agriculture Organization (FAO), the Intergovernmental Panel on Climate Change (IPCC), the International Oceanographic Commission, and many others.

Even if such a massive reorganization could be done, there are good arguments against it. One problem is that environmental issues are often diverse and the various issues might not coexist well.⁴⁰ Another problem is that the resulting organization would

38. See, e.g., Frank Biermann, *The Emerging Debate on the Need for a World Environment Organization: A Commentary*, 1 GLOB. ENVTL. POL. 45, 46 (2001); Juma, *Perils*, *supra* note 28 at 13.

39. Michael Ben-Eli, *Towards a New System*, 9 OUR PLANET, No. 1, 1997, at 21, 23.

40. Juma, *Perils*, *supra* note 28, at 15.

cut a huge swath through domestic policy, and governments might be uncomfortable giving an international organization that much responsibility. In pointing out why a broad WEO would be impossible, von Moltke notes that no major government has an environmental ministry as broad as the subject matter of a fully centralized WEO.⁴¹ If governments have not deemed it advisable to amalgamate environmental functions at the national level, why should one assume it would be advantageous at the international plane? It could be that governments have maintained separate national agencies with environmental functions to coincide with disconnected international organizations, yet that seems unlikely because typically governments pay little attention to multilateral environmental institutions.

The futility of full centralization is evidenced by the fact that even the non-environmental agencies will need environmental programs, staff, and offices.⁴² The World Bank, the WTO, ILO, WHO, FAO, U.N. Educational, Scientific and Cultural Organization, the U.N. Conference on Trade and Development (UNCTAD), the International Atomic Energy Agency, and the Organization for Economic Co-operation and Development each have their own environmental components, and properly so. The mainstreaming of environment into all agencies is one of the successes of modern environmental policy, even if these environmental components are often inadequate. The existence of such environmental offices is hardly redundant; it is the means that organizations use for interface on related issues. The fact that there may be a dozen or more international offices addressing climate change is not symptomatic of disorganization; rather, these offices exemplify recognition that responding to global warming will require a multi-pronged effort. Of course, these efforts need coordination.

The centralist would not deny the need for regional environmental programs like the regional seas treaties and the North American Commission for Environmental Cooperation, as well as for environmental components of regional institutions such as the development banks or the Association of Southeast Asian Nations (ASEAN). The regional level is often the right level for environ-

41. Von Moltke, *supra* note 31, at 24.

42. Paul C. Szasz, *Restructuring the International Organizational Framework*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: NEW CHALLENGES AND DIMENSIONS 340, 355, 383 (Edith Brown Weiss ed., 1992).

mental cooperation because it matches the scope of the problem or the ecosystem at issue. Thus, even with a fully centralized WEO, there might be more intergovernmental environmental institutions outside the WEO than inside it.

That a fully centralized WEO is impossible should not come as a surprise, since no other international regulatory regime is fully centralized either. The WTO may be the core of the trade regime, but many trade agencies and bodies of law lie outside of it, such as UNCTAD, the World Customs Organization, the International Trade Centre, the trade directorate of the OECD, the U.N. Convention on Contracts for the International Sale of Goods, the U.N. Commission on International Trade Law, and various agreements on trade in food, endangered species, hazardous waste, military goods, etc. The WHO may be the core of the health regime, but many health agencies and bodies of law lie outside of it, such as the U.N. Population Fund, the Joint U.N. Program on HIV/AIDS, the U.N. International Drug Control Programme, the International Consultative Group on Food Irradiation, and numerous ILO conventions. Even the United Nations system, which is comprehensive, excludes the World Bank Group, the International Monetary Fund, and the WTO. While the environmental regime may seem comparatively disjointed, consider the development, energy, ocean, and counter-terrorism regimes, which enjoy even less cohesion.

Some commentators contend that the environmental regime should become more unified, following the model of the WTO that has transformed various GATT agreements into a single undertaking. This WTO analogy is faulty however. The GATT was centralized already. The WTO was created from existing GATT agreements (as modified in 1994) and several new agreements.⁴³ The WTO did not incorporate non-GATT entities in the same way that WEO advocates want to incorporate non-UNEP entities. Although the WTO did incorporate new obligations on intellectual property, it did not transfer these functions from the WIPO where they remain. It is true that WTO membership was conditioned on accepting new versions of GATT agreements that had gathered only a small number of parties,⁴⁴ but the new versions were nego-

43. See JEFFREY J. SCHOTT, *THE URUGUAY ROUND: AN ASSESSMENT* (1994).

44. For example, the GATT Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

tiated during the Uruguay Round. That maneuver is quite different from establishing a WEO and requiring that governments ratify, say, the Desertification Convention as a condition for WEO membership.

The WTO is also used misleadingly as a model for integrating the MEAs. For example, the German Advisory Council on Global Change contends that the MEA Conferences of the Parties can be brought under the umbrella of a WEO in the same way that special committees of the WTO Ministerial Conference operate with a "high degree of autonomy."⁴⁵ This analogy is inapt, however, because almost all of the WTO committees are committees of the whole, and none of them so far has operated with any autonomy from the WTO membership as a whole.

The only regime that has consolidated to the extent that proponents envision for a WEO is intellectual property. In 1967, the U.N. established the WIPO to bring together the intellectual property conventions and unions.⁴⁶ Today, WIPO oversees 23 separate treaties.⁴⁷ Ultimately, however, WIPO is not a convincing model for a WEO because it is too topically narrow and because recent dissatisfaction with WIPO has led GATT parties to write the new WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁴⁸ In addition, in WIPO, governmental members are *not* required to join the treaties and there are no WIPO systems for implementation review, both of which would be necessary for a WEO.

Thus, if centralization is going to be done, the WEO will need to chart its own course rather than follow in the footsteps of another organization. This need for complete reinvention, however, is not a reason to refrain from undertaking a WEO.

C. A Reorganization Calculus

A practical plan for a WEO would centralize some, but not all, environmental agencies and functions, with the recognition that many important institutions would be omitted. Determining

45. GERMAN ADVISORY COUNCIL ON GLOBAL CHANGE, *supra* note 24, at 176.

46. UNITED NATIONS HANDBOOK 2001, at 298-99.

47. See WORLD INTELLECTUAL PROPERTY ORGANIZATION, About WIPO, at <http://www.wipo.org/about-wipo/en/> (last visited Mar. 26, 2002).

48. Barbara Koremenos, Charles Lipson & Duncan Snidal, *The Rational Design of International Institutions*, 55 INT'L ORG. 761, 767 (2001).

whether such a plan should be pursued requires weighing the costs of reorganization against the gains. The obvious costs of reorganization include administrative costs and opportunity costs as officials focus on reorganization rather than production. The gains are speculative, yet one would hope for administrative savings and anticipated improvement in policy coherence. No major reorganization is worth doing unless the expected gains are well in excess of the expected costs.

Can we really anticipate that a WEO would lead to higher value outputs in environmental governance? Reducing the excessive fragmentation in the environmental regime would seem almost necessarily beneficial since, under conditions of fragmentation, institutions can operate at cross purposes.⁴⁹ Yet fragmentation also has its good side. According to recent management research, innovation proceeds most rapidly under conditions of some optimal, intermediate degree of fragmentation.⁵⁰ In addition, the environmental regime has surely benefited from diversity among the entities that do environmental work.⁵¹ Since a high capacity for innovation may be the most distinguishing feature of the environmental regime,⁵² and a key source of its successes, policymakers ought to be careful when undertaking a reorganization that would reduce fragmentation, and hence innovation, too much. One reason why some fragmentation is good for innovation is that fragmented entities compete with each other.

The main targets of the WEO proposals are the MEAs and their associated institutions. It is the centralization of the core MEAs that is touted as the main benefit from reorganization, yet the independence of the MEAs has been the most innovative feature of the current environmental regime. A recent study in the *American Journal of International Law* provides a comprehensive review of the techniques of rulemaking, decision-making, and compliance

49. Jonathan Wiener has pointed out how fragmented institutions that focus too much on one risk can exacerbate other risks. Jonathan Baert Wiener, *Managing the Iatrogenic Risks of Risk Management*, 9 RISK: HEALTH, SAFETY & ENVIRONMENT 39 (Winter 1998).

50. Jared Diamond, *The Ideal Form of Organization*, WALL ST. J., Dec. 12, 2000, at A26.

51. Peter H. Sand, *Environment: Nature Conservation*, in MANAGING GLOBAL ISSUES: LESSONS LEARNED, *supra* note 22, at 281, 297.

52. Alexandre Kiss, *The Implications of Global Change for the International Legal System*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW, *supra* note 42, at 315; Von Moltke, *supra* note 31, at 26. In an unpublished paper, David Victor of the Council on Foreign Relations argues that nearly every effort to achieve coordination will also reduce diversity and competition.

review in MEAs, and characterizes these developments as "unique" within international organization and law.⁵³ Indeed, the significance of this development leads the authors to devise a new category to encompass MEAs, calling them "autonomous institutional arrangements" to distinguish them from traditional international organizations.⁵⁴

If the innovativeness of the MEAs stems from their autonomy, that would throw up a caution flag against reorganizing in a way that reduced that very feature. At present, however, insufficient evidence exists on the value of autonomy for the MEAs. Certainly, the autonomous MEAs have been more innovative over the past 30 years than the more traditionally structured international organizations like WHO and ILO. In defense of these two organizations, it should be noted that they have gotten more innovative in recent years. The WHO is now using previously neglected authorities to promulgate a convention on tobacco, while the ILO has enacted a new Declaration that defines fundamental worker rights and provides a review mechanism for governments that have not ratified the applicable conventions.⁵⁵

To be sure, autonomy was not necessarily the key reason why the MEAs were so dynamic and successful. The main reason perhaps is that the MEAs were driven by advancements in scientific understanding of the underlying environmental problems. Had the environmental problems been less severe, the MEAs would not have been called upon to do as much. Furthermore, the MEAs worked because governmental parties wanted them to, and were willing to endow the Conferences of the Parties with important powers.⁵⁶ The question remains, however, whether governments would have been as willing to grant as much authority to a *general* environmental organization as they did to the specialized MEAs.

In weighing the costs and benefits of greater centralization of

53. Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law*, 94 AM. J. INT'L LAW 623, 655 (2000). An equally valuable study, published at the same time, is Volker Röben, *Institutional Developments under Modern International Environmental Agreements*, in 4 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 363-443 (Jochen A. Frowein & Rüdiger Wolfrum eds., 2000).

54. Churchill & Ulfstein, *supra* note 53 at 623, 631 (noting that since 1972 no global MEA established a new intergovernmental organization for its institutional machinery).

55. David P. Fidler, *International Law and Global Public Health*, 48 U. KAN. L. REV. 1, 21-22 (1999); RAYMOND TORRES, TOWARDS A SOCIALLY SUSTAINABLE WORLD ECONOMY 64 (2001).

56. Churchill & Ulfstein, *supra* note 53, at 636-41.

environmental functions, one should start by considering two of the leading arguments for a WEO. First, a WEO would be stronger than UNEP. Second, a WEO would serve as a counterweight to the WTO. Neither argument in itself, however, is convincing as a reason for creating a WEO.

The strength of UNEP results from the choices that governments have made. If governments wanted to make UNEP stronger now, they could do so. The act of establishing a WEO, with nothing more added, will not strengthen environmental governance. Analysts sometimes make the mistake of thinking that reorganization (or organizational name changes) can drive policy. That almost never happens. Reorganizations can only be useful when they implement policy changes.

If governments create a WEO, it may be because they have decided that a more centralized, better funded environmental governing structure is needed to achieve more effective environmental policy. If so, then a WEO would be stronger than UNEP. Yet governments may also decide to create a WEO without giving it any more authority or funding than UNEP now has. That sort of WEO, endowed with only an enhanced "conscience" role, would not be appreciably stronger than UNEP.

The notion that a well-constituted WEO could act as a check or counterweight against overreaching by the WTO has some potential validity.⁵⁷ External pressure on the WTO is needed to get trade officials to consider the environmental implications of what they are doing, particularly now that the WTO has launched a new trade round. UNEP recognized the need for such advocacy in 1993 and began to undertake trade-related efforts. That these efforts have had little effect is due to their poor execution and to the difficulty of the challenge, and not at all to UNEP's status as a "programme" rather than a specialized agency.

While it is true that GATT/WTO officials and national delegates to the WTO have claimed for years that coordinating with the environmental regime is hard because it is so disparate, one should be hesitant to accept such claims at face value. The WTO does not cooperate well with other agencies because it is hard-wired to be

57. Daniel C. Esty, *Toward a Global Environmental Organization*, in *TOWARD SHARED RESPONSIBILITY AND GLOBAL LEADERSHIP: A REPORT TO THE LEADERS OF THE G-8 MEMBER COUNTRIES*, 30, 31 (C. Fred Bergsten et al. eds., 2001), available at <http://www.iie.com/g8-2001.pdf>.

insular and parochial, and to resist other values beyond commercial reciprocity. If organizational proximity were sufficient for WTO coordination, then one would expect the WTO to have very tight relations with the WHO and the ILO, whose headquarters are located within a few kilometers of the WTO. The WTO, however, engages in little cooperation with those agencies.

Creating a WEO might help improve coordination between trade and environment. Then WTO Director-General Renato Ruggiero surprised observers in 1998 when he said in a speech that the "Shrimp-turtle" Appellate Body decision "underlines the need to strengthen existing bridges between trade and environmental policies—a task that would be made immeasurably easier if we could also create a house for the environment to help focus and coordinate our efforts."⁵⁸ Ruggiero, however, did not explain why the task would be any easier. In 2000, Supachai Panitchpakdi, who is slated to become the next WTO Director-General in September 2002, contended, "The problem is that there is nobody of the same stature to deal with the WTO because there is no World Environment Organization."⁵⁹ He goes on to suggest that the United Nations should try to set up a WEO as quickly as possible. In the November 2001 Doha Ministerial Declaration, the WTO ministers endorsed continued WTO interactions with a multipolar environmental regime stating, "We welcome the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations."⁶⁰

While trade should be an important issue for UNEP and its institutional successors, trade is not itself among the most serious environmental problems. Thus, the challenge of grappling with the WTO would not be a sufficient reason to constitute a WEO. The case for a WEO needs to be made on environmental grounds.

D. Why a WEO Is Needed

A WEO is needed for two reasons: First, many ecosystems con-

58. Renato Ruggiero, "A Global System for the Next Fifty Years," Address to the Royal Institute of International Affairs, at http://www.wto.org/english/news_e/spr_e/chat_e.htm (Oct. 30, 1998).

59. H.E. Dr. Supachai Panitchpakdi, *Keynote Address: The Evolving Multilateral Trade System in the New Millennium*, 33 GEO. WASH. INT'L L. REV. 419, 443 (2001).

60. WTO, Ministerial Declaration, WTO Doc. WT/MIN(01)/DEC/1, ¶ 6, at <http://www.wto.org> (Nov. 14, 2001).

tinue to deteriorate and the human environment is under serious, uncontrolled threats. Second, the processes of international environmental governance need better coordination.

While human stewardship over the earth's environment may not be disastrous, serious environmental problems exist that are not being adequately managed under current institutions. In GEO-2000, UNEP concluded, "if present trends in population growth, economic growth and consumption patterns continue, the natural environment will be increasingly stressed."⁶¹ The most serious problems include a massive loss of biodiversity, over-fishing, depleted freshwater supplies, and global warming.

Before critiquing the current environmental regime, one should first note that environmental governance is far from being fully dysfunctional. UNEP has achieved a number of successes over the years, particularly in catalyzing new MEAs.⁶² The systems for implementation review of environmental treaties are complex, yet the results are often positive.⁶³ In recent years, important new MEAs were negotiated on biosafety, persistent organic pollutants, prior informed consent on trade in chemicals and pesticides, liability and compensation regarding hazardous wastes, and on the implementation of the Kyoto Protocol on climate change.

Nevertheless, environmental governance does not function as well as it needs to. The environmental treaties are often too weak to address the problem they were set up to correct.⁶⁴ Among the MEAs, there is a lack of coordination and missed opportunities for policy integration. At a recent meeting of the Open-Ended Intergovernmental Group of Ministers, the President of the UNEP Governing Council reported, "The proliferation of institutional arrangements, meetings and agendas is weakening policy coherence and synergy and increasing the negative impact of limited resources."⁶⁵ These financial resources are not only limited but are

61. U.N. ENVIRONMENT PROGRAMME, OVERVIEW: GLOBAL ENVIRONMENTAL OUTLOOK 2000 3 (1999), available at <http://www.unep.org>.

62. MOSTAFA K. TOLBA (WITH IWONA RUMMEL-BULSKA), GLOBAL ENVIRONMENTAL DIPLOMACY (1998).

63. THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS 16-17 (David G. Victor et al. eds., 1998).

64. See generally HILARY FRENCH, VANISHING BORDERS: PROTECTING THE PLANET IN THE AGE OF GLOBALIZATION (2000); MARK HERTSGAARD, EARTH ODYSSEY: AROUND THE WORLD IN SEARCH OF OUR ENVIRONMENTAL FUTURE (1998).

65. *Open-Ended Intergovernmental Group of Ministers or their Representatives on International Environmental Governance, Report of the Chair*, U.N. Environment Programme, Annex I,

also diminishing, and the cuts in UNEP's budget are, to some extent, emblematic of the lack of confidence by governments in the current management structure.

One longtime observer, Konrad von Moltke, reminds us that at no time has the entire structure of international environmental management ever been reviewed with the goal of developing optimum architecture.⁶⁶ The U.N. Task Force on Environment and Human Settlements reported that environmental activities in the U.N. "are characterized by substantial overlaps, [and] unrecognized linkages and gaps" which are "basic and pervasive."⁶⁷ If this is true even within the U.N., it is probably much worse externally.

The Task Force reported further that environmental ministers are frustrated at having to attend so many different meetings, and that it was difficult for them to get the big picture.⁶⁸ The current scattered organization of environmental governance is confusing to experts and incomprehensible to the public. If an organization chart of world environmental governance existed, its hydra-like nature would be "Exhibit A" for reformers.

Joy Hyvarinen and Duncan Brack have keenly observed one symptom of governance failure: the tendency to "recycle" decisions by having each new forum call for implementation of what the previous forum proposed.⁶⁹ All organizations do this to some extent, but it is particularly prevalent in the environmental regime. The current lack of coherence in environmental organization provides reason enough for reform, yet an even stronger reason exists—namely, that the trend is for more proliferation. The question of whether environmental governance should be central-

Proposals of the President of the UNEP Governing Council, ¶ 4j, U.N. Doc. UNEP/IGM/3/3 (2001), available at <http://www.unep.org/IEG/WorkingDocuments.asp>.

66. Konrad Von Moltke, *Whither MEAS? The Role of International Environmental Management in THE TRADE AND ENVIRONMENT AGENDA* (July 2001) at 15, available at <http://www.iisd.org>.

67. U.N. GAOR, 53d Sess., Annex, Report of the United Nations Task Force on Environment and Human Settlements, ¶ 20, U.N. Doc. A/53/463 (1998) [hereinafter Task Force Report].

68. In correspondence with the author, Urs Thomas suggests that the "frustration" argument is overdrawn. He sees evidence of a "diplotourism" phenomenon in which environmental officials from developing countries enjoy the intergovernmental meetings because the officials gain recognition that they do not achieve in domestic politics.

69. Joy Hyvarinen & Duncan Brack, *Global Environmental Institutions: Analysis and Options for Change* (Sep. 2000) at 41, at <http://www.riia.org/Research/eep/eeparticle.html> (last visited Mar. 26, 2002).

ized was discussed extensively in the run-up to the Stockholm Conference. For example, in 1972 a special committee of the Commission to Study the Organization of Peace noted that "a new intergovernmental environmental organization" would provide "the best possible coordination" and would "adequately centralize all efforts."⁷⁰ Yet the committee rejected that approach because "it would be difficult to persuade organizations to transfer their environmental functions to the new entity . . ." Thirty years later, the same conundrum exists, yet the number of environmental functions that would need to be transferred to a WEO has multiplied ten-fold. Back in 1970, when George Kennan recommended the creation of an "International Environmental Agency," he hypothesized that a single entity with great prestige and authority stood the best chance of overcoming the formidable resistance from individual governments and powerful interests. As he analyzed it: "One can conceive of a single organization's possessing such prestige and authority. It is harder to conceive of the purpose being served by some fifty to a hundred organizations, each active in a different field, all of them together presenting a pattern too complicated even to be understood or borne in mind by the world public."⁷¹

Today, we live in the nightmare scenario that worried Kennan. The crazy quilt pattern of environmental governance is too complicated, and is getting worse each year. It needs an overhaul.

In the Rio Summit in 1992, the governments had an opportunity to restructure environmental governance, but instead of doing so, they bypassed UNEP in the new climate change convention and created the Commission on Sustainable Development (CSD). At a meeting of experts held in Cambridge in May 2001, there was a consensus that on the whole, the CSD adds little value to the debate on sustainable development.⁷² Yet no one predicts that the CSD will be abolished anytime soon.

The problem is that the current platform of environmental governance cannot correct itself and all of the trends point to contin-

70. COMMISSION TO STUDY THE ORGANIZATION OF PEACE, *Report of the Special Drafting and Planning Committee on the United Nations and the Human Environment*, in THE UNITED NATIONS AND THE HUMAN ENVIRONMENT 15, 60-61 (1972).

71. Kennan, *supra* note 5, at 409.

72. *A Summary Report from the UNEP Expert Consultations on International Environmental Governance*, SUSTAINABLE DEVELOPMENTS, June 7, 2001, at 5, available at <http://www.iisd.ca/download/pdf/sd/sdvol53num1.pdf>.

ued proliferation, with little appetite by governments to thin out the ineffective institutions. The tendency toward expansion can be seen in recent reformist actions. Concerned about the fragmentation of environmental institutions, governments created *three* new ones to deal with the problem—the Global Ministerial Environmental Forum (GMEF), the Environmental Management Group, and the Open-Ended Intergovernmental Group of Ministers or their Representatives on International Environmental Governance. Of course, each of these institutions can be justified and they appear to be serving a useful purpose. But it is hard to escape the conclusion that unless governments take a big step toward creating a holistic WEO, the current governance architecture will get worse and the time-consuming dialogue on governance will remain open-ended rather than conclusive.

II. ORGANIZING THE WEO

Two principles of international organization are useful in constructing a WEO. First, the international organization needs to be able to coordinate its activities with other international organizations along the policy interstices. An example of this horizontal coordination is environment and public health. Second, the international organization needs to be able to carry out oversight of the relevant activities of national governments. By oversight, I do not refer to supranationalism. Rather, I mean that governments agree by treaty to have their implementation of the treaty reviewed by a multilateral entity. In other words, this is a vertical check-and-balance similar to what exists in federal systems. The discussion in Part II will discuss the application of both of these principles.

Although the advocates of a WEO approach, such as Daniel Esty, have made considerable progress in gaining support for needed reforms, the community of states is far from convinced at this time. One problem is that the idea of a WEO is still too amorphous. In an effort to clarify the key issues, Part II of this article will present a new analysis of the WEO from my own perspective.

Part II has six sections. Section A discusses, but ultimately rejects, some proposals that have been put forward for setting up a WEO. Section B presents two alternatives for setting up a WEO and dealing with UNEP. Section C examines several structural issues. Section D looks at the relationship between a WEO and the MEAs. Section E considers some key issues of WEO orientation.

Section F lists several functions for a WEO and examines four of them.

A. Current Proposals That Won't Work

Before considering some conceivable possibilities for reorganization, we need to consider some that are clearly unsuitable. The first is to create a WEO in the U.N. but separate from UNEP. The second is to create a WEO outside the U.N. The third is to create multiple WEOs. As we shall see, all three of these prove to be unrealistic.

Because of the political significance of UNEP, the idea of creating a separate WEO in the U.N. is a non-starter. As von Moltke has pointed out, "UNEP must stand at the heart of any organizational restructuring of international environmental management."⁷³ This is perhaps unfortunate given UNEP's inadequacies. Yet even though it is often critical of UNEP, the environmental community is also intensely proud of it. In recent years, UNEP has succeeded in getting its status blessed by governments, and that is not likely to change. For example, the Nairobi Declaration of 1997 stated that UNEP "has been and should continue to be the principal United Nations body in the field of the environment...."⁷⁴ The Malmö Ministerial Declaration of 2000 stated that the World Summit of 2002 "should review the requirements for a greatly strengthened institutional structure for international environmental governance" and that "UNEP's role in this regard should be strengthened and its financial base broadened and made more predictable."⁷⁵ Thus, the option of creating a WEO separate from UNEP is truly not feasible.

Another unrealistic approach is to create a WEO outside the U.N. Some commentators point to the WTO as a model for externalization, and it is true that many participants in the WTO believe that its non-U.N. status is a source of its effectiveness. Whatever the truth of that assessment for the WTO, the situations are hardly comparable because the trading system was traditionally

73. Von Moltke, *supra* note 66, at 30-31.

74. Nairobi Declaration, February 1997, ¶ 1, available at <http://www.unep.org/Documents>. (The Declaration was endorsed by the U.N. General Assembly Special Session in June 1997.)

75. Malmö Ministerial Declaration, 2000, ¶ 24, available at http://www.unep.org/malmo/malmo_ministerial.htm.

outside the U.N., while UNEP is inside the U.N. Environmental issues, by contrast, are now pervasive throughout the U.N., and it would be foolhardy to try to extract them.

The other option that seems unrealistic is to create a quartet of new organizations. Von Moltke has written that "[w]hile it may be inappropriate to create a single WEO, careful analysis may reveal that we need three or four organizations."⁷⁶ The only realistic way to go about this would be to create clusters out of existing organizations since, looking ahead to Johannesburg, governments will have a difficult time gaining a consensus to establish even one WEO. Von Moltke gives the example of a marine pollution complex that might include UNEP, IMO, and the Convention on the Law of the Sea. This would be a loose cluster of cooperative entities rather than a new organization. The idea that governments would simultaneously design four new organizations is unimaginable, but it would be possible to adopt a four-cluster approach.

B. WEO Organizational Alternatives

At this time, there are two realistic organizational structures for a WEO vis-a-vis UNEP. The first is a WEO that adds new flanks to UNEP, with UNEP retaining its organizational identity. The second is a WEO that incorporates UNEP entirely by dissolving it into the new organization.

The first option may resemble the four-country Declaration of 1997, discussed above, which called for a global environmental umbrella organization with UNEP as a "major pillar."⁷⁷ Von Moltke has recently pointed to the option of establishing a WEO with UNEP as a division of it.⁷⁸ This WEO could be created as a specialized agency pursuant to Article 59 of the U.N. Charter or could be a new type of agency more central to the U.N.⁷⁹ The Governing Council of UNEP might become the Governing Council of the WEO, but otherwise UNEP would retain its current programs and location in Nairobi. The remaining components of the WEO could include some MEAs and other environmental pro-

76. Von Moltke, *supra* note 31, at 27.

77. Declaration, *supra* note 1.

78. Von Moltke, *supra* note 66, at 32.

79. Article 59 of the U.N. Charter provides that the Organization may initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth.

grams.

The second option would be to establish a WEO that incorporates the UNEP, with the intention of dissolving UNEP into the new organization. This WEO could be created as a specialized agency pursuant to Article 59 of the U.N. Charter⁸⁰ or could be a new type of agency more central to the U.N. The remaining components of the WEO could include some MEAs and other environmental programs. Under this option, one could locate the headquarters of the WEO in a location other than Nairobi. Some analysts say that the Nairobi location for UNEP sharply diminishes its effectiveness.

What would be the implications of one approach versus the other approach? At this level of generality, it is hard to say much definitively. Either organization could be well funded or poorly funded. For example, the transformation of the GATT to the WTO did not lead to a large increase in funding, initially. Either organization could attract MEAs or fail to. Either organization could promote and utilize science well. Either organization could carry out monitoring and reporting. Either organization could strengthen MEAs.

One difference may be predictable, however. The second option would provide for more reorganization and therefore stands a better chance of attaining greater program integration. Of course, putting issues within the same organization does not necessarily cause them to be integrated. For example, in seven years of operation, the WTO has done little to integrate consideration of goods and services.⁸¹

I have indicated that a WEO could be a specialized agency or something else. What else? Under Article 22 of the U.N. Charter, the General Assembly may establish such subsidiary organs as it deems necessary.⁸² Thus, it would be possible for the General Assembly to establish a new hybrid organization for the environment with some of the autonomy of a specialized agency while still remaining at the center of the U.N. This could be justified on the grounds that environmental concerns are too intrinsic to the

80. This was the authority used to upgrade the U.N. Industrial Development Organization (UNIDO) to a specialized agency in 1985.

81. Pierre Sauvé & Americo Beviglia Zampetti, *Subsidiary Perspectives on the New Trade Agenda*, 3 J. INT'L ECON. L. 83, 104 (2000).

82. U.N. CHARTER art. 22.

U.N.'s mission to be assigned to a "specialized" agency.⁸³ The downside of this approach is that anything less than full status as a specialized agency would subject UNEP to the same bureaucratic discrimination that it now has in the U.N. system, where U.N. bureaucrats reportedly still call UNEP a "second rate" agency.

C. Structural Issues

The benefits of a WEO over the current structure will depend upon how the WEO is designed. Section C considers five structural issues including the role of the environment ministers, the executive of the WEO, participation by elected officials, participation of nongovernmental organizations, and the selectivity of WEO membership. Perhaps the most important structural issue, the relationship of the WEO to the MEAs, will be discussed separately in Section D.

1. Role of Environmental Ministers

In 1999, U.N. General Assembly Resolution 53/242 approved the proposal of the U.N. Task Force on Environment and Human Settlements to institute an annual, ministerial-level global environmental forum in which participants can gather to review important and emerging policy issues in the field of the environment.⁸⁴ The first Ministerial Forum (GMEF) was held in Malmö in May 2000 as a special session of the UNEP Governing Council. The U.N. Task Force also recommended that membership in the UNEP Governing Council be made universal.⁸⁵

While the annual meeting of national environmental ministers can be beneficial to promote solidarity and serve as a forum for discussion, it is doubtful that such a large assembly could serve as an effective governing body. The establishment of a non-universal Governing Council for UNEP was intended to make it

83. See NATIONAL ACADEMY OF SCIENCES (USA), INSTITUTIONAL ARRANGEMENTS FOR INTERNATIONAL ENVIRONMENTAL COOPERATION 25-31 (1972) (critiquing the idea of a U.N. specialized agency for the environment).

84. G.A. Res. 242, *Report of the Secretary-General on Environment and Human Settlements*, U.N. GAOR, 53d Sess., ¶ 6, U.N. Doc. A/RES/53/242 (1999). In 1987, the Brundtland Commission had recommended that ministers lead national delegations to the UNEP Governing Council. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 322 (1987).

85. Task Force Report, *supra* note 67, Recommendation 13(c).

small enough to operate as a committee, although its size of 58 countries is rather large. Organizations without a governing body, such as the WTO, make decisions very slowly. The U.N. Task Force appeared to reach its recommendation for a universal UNEP Governing Council without any analysis.

The ILO could serve as a model for a WEO because it integrates a workable governing body with a universal membership forum and achieves a good compromise between universality and effectiveness. The ILO Governing Body, with 28 nations, meets three times a year in extended sessions.⁸⁶ The ILO also has an annual conference of all party states where new conventions are adopted and other business is carried on. It should be noted, however, that the ILO plans its work so that the annual conference adopts at least one new convention virtually every year. Thus, labor ministers do not have to worry about holding a conference that fails to accomplish anything. A WEO annual conference that produced nothing other than a recycled declaration would soon lose the interest of the world, if not the environmental ministers themselves.

Another positive aspect of the ILO model is that each government sends *two* governmental members in its delegation, as well as employer and worker delegates.⁸⁷ This means that a government will be represented by a labor ministry official plus an official from another agency, typically the Ministry of Foreign Affairs. This balance of representation may be even more important for a WEO that would have a much broader scope than the ILO. The problem with just sending the Environment Minister to the WEO is that this individual is likely to have less than full responsibility within the national government for all of the issues that come under the WEO's purview. One way of dealing with representation may be for the WEO founding document to state that each government should send a delegation reflective of the division of authority within its government for environmental affairs.

The establishment of the GMEF in 2000 is an experiment too new to evaluate. One can imagine a GMEF structure becoming the central decision making body of a WEO, but it is hard to imagine the GMEF being fruitful if detached from an organization that

86. See <http://www.ilo.org/public/english/standards/relm/gb/index.htm> (last visited Feb. 21, 2002).

87. See <http://www.ilo.org/public/english/standards/relm/ilc/ilcblurb.htm> (last visited Feb. 21, 2002).

can prepare substantive proposals for ministers to approve. It is one thing to organize broadly focused G-7 and G-20 meetings with staffing by governments because no one sees these meetings as making day-to-day decisions.⁸⁸ It is quite another to attempt to carry out global environmental governance through an annual meeting of a GMEF.

2. WEO Leadership

International governance does not usually follow the corporate model in which shareholders delegate authority to a board and chief executive officer. While governments have done so with the World Bank, the International Monetary Fund, and the U.N. Secretary-General to some extent, they are unlikely to do so with the Executive of a WEO. A WEO would therefore most likely be a member-driven, government-driven organization. In designing the WEO, however, governments should still look for ways to enhance the leadership capacity of the Executive of the WEO. Consideration should also be given to establishing a two-person Executive on the assumption that management and representational roles are both full-time.

3. Participation by Elected Officials

International organizations today often have little or no participation by elected officials and that has contributed to a perceived lack of legitimacy. Since representation to international agencies has traditionally been viewed as an executive function with the participants being diplomats or bureaucrats, this is not an easy problem to remedy. The establishment of a WEO, however, provides an opportunity to build in a role for national elected officials at the start rather than trying to shoehorn it into an already-operating agency. One possible approach to providing a role for elected officials would be to establish a WEO Parliamentary Forum consisting of one or two elected officials from each WEO member country. Each country could decide individually how those delegates are to be selected. The role of the Forum would be to meet periodically to review the operations of the WEO and pos-

88. For information about the G-7 and G-20, *see* <http://www.usask.ca/library/gic/v1n3/hajnal/hajnal.html>; <http://www.g20.org/> (last visited Feb. 20, 2002).

sibly hold a question period for the Executive of the WEO. The Forum might also invite other world officials to participate in its question period—for example, it could invite the President of the World Bank or the Director-General of the WTO. If such a Forum is established, a role might also be found for associations of parliamentarians, such as the Global Legislators for a Balanced Environment (GLOBE).⁸⁹

4. Nongovernmental Participation

As noted above, the idea of using an ILO model for nongovernmental participation in the WEO goes back to the initial discussions that led to the creation of UNEP. Sir Geoffrey Palmer reintroduced this idea in the early 1990s, when he suggested that two government delegates, one from business and one from environmental organizations, represent each country.⁹⁰ In the recent debates, several analysts have suggested this same idea. For example, Runge proposes that the WEO have representatives from government, business, environmental groups, and other nongovernmental groups.⁹¹ Esty has recommended a streamlined WEO supported by a network of government officials, academics, business, and NGO leaders.⁹²

Because nongovernmental participation in a WEO is so vital, advocates of NGO participation need to be realistic about the limitations on the role NGOs can play. In my view, governments are not yet prepared to replicate the ILO model in which the nongovernmental and government roles are equal.⁹³ Similarly, governments are not ready to establish an organization in which nongovernmental organizations can lodge environmental complaints against scofflaw governments, as was proposed by Philippe Sands among others.⁹⁴

89. For information about GLOBE, see <http://www.globeinternational.org/background.html> (last visited Feb. 20, 2002).

90. Palmer, *supra* note 8, at 281.

91. Runge, *supra* note 18, at 405.

92. Esty, *supra* note 37, at 15.

93. The closest that governments have come recently is the UNAIDS Programme which has a Programme Coordinating Board that serves as its governing body. The Board has 22 governments, 7 cosponsors (which are international agencies), and 5 nongovernmental organizations. But the agencies and NGOs are nonvoting. See <http://www.unaids.org/about/governance/governance.html>.

94. Philippe J. Sands, *The Environment, Community, and International Law*, 30 HARV. INT'L L. J. 393, 417 (1989); Peggy Rodgers Kalas, *International Environmental Dispute Resolution and*

The environmental regime already has considerable NGO and private sector participation, and designers of a WEO can take advantage of this experience. NGO participation has often been constructive in the MEA setting where technical decisions are being made—for example, in biosafety.⁹⁵ The very deep NGO participation in the CSD has been impressive,⁹⁶ but the overall experience with the CSD has been a failure, since no significant decisions or actions have emerged.

Perhaps the best model for light nongovernmental participation is the OECD which has business and trade union advisory committees that interact with governmental committees and can make recommendations.⁹⁷ It should also be noted that while the functions of the OECD are largely hortatory, it can draft binding decisions and new conventions.⁹⁸ It has enjoyed one recent success in the Convention on Combating Bribery and two failures on investment and shipbuilding subsidies.⁹⁹ Although the idea has been discussed for years, the OECD has been unable to agree on any new advisory committees, such as one for the environment.

One problem with establishing WEO advisory committees is that the CSD has now set the precedent of having the governments hear from a large number of interest groups, including women, youth, indigenous peoples, nongovernmental organizations, local authorities, workers and trade unions, business and

the Need for Access by Non-State Entities, 12 COLO. J. INT'L ENVTL. L. & POL'Y 191 (2001). In the North American Agreement on Environmental Cooperation, nongovernmental organizations may make submissions to the Secretariat of the Commission for Environmental Cooperation alleging that one of the parties to the treaty is failing to effectively enforce its environmental law. The Secretariat may consider that submission in deciding whether to develop a factual record. North American Agreement on Environmental Cooperation, Sept. 14, 1993, Can.-Mex.-U.S., arts. 14.1, 15.1, 32 I.L.M. 1480.

95. Laurence Boisson de Chazournes & Urs P. Thomas, *The Biosafety Protocol: Regulatory Innovation and Emerging Trends*, 4 SWISS REV. INT'L & EUR. L. 513, 550–57 (2000).

96. Joke Waller-Hunter, *Governance for Sustainable Development in a Globalising World 2* (2001) (unpublished manuscript) (noting that the CSD invented the multi-stakeholder dialogue).

97. See <http://www.biac.org/> (last visited Feb. 20, 2002); <http://www.tuac.org/about/about.htm> (last visited Feb. 20, 2002).

98. Convention on the Organisation for Economic Co-operation and Development, Dec. 14, 1960, art. 5(a), T.I.A.S. No. 4891.

99. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. TREATY DOC. NO. 105-43, 37 I.L.M. 1 (1998); William Crane, *Corporations Swallowing Nations: The OECD and the Multilateral Agreement on Investment*, 9 COLO. J. INT'L ENVTL. L. & POL'Y 429 (1998); Aviva Freudmann, *The Global Shipbuilding Pact That Got Away*, J. COM., Apr. 18, 2000, at 7.

industry, the scientific community, and farmers. Rather than create homogenous advisory committees for these interests, the WEO might set up a heterogeneous advisory committee by cluster. For example, the WEO could have a multi-stakeholder advisory committee for biodiversity that would include environmental groups, biologists, economists, indigenous peoples, and business. A well-respected organization might be asked to set up this committee—for example, the World Conservation Union/IUCN.¹⁰⁰

However nongovernmental participation is organized, it is vital that a WEO build such participation into its constitution. As the recent report of the Secretary-General pointed out, stakeholder participation is too often “based on temporary and ad hoc rather than permanent and reliable mechanisms and procedures. A strengthened sense of ownership of the decisions taken among participating stakeholders would help in implementing many decisions relating to sustainable development.”¹⁰¹

If the WEO is simply an upgraded version of UNEP that includes only governments without establishing any firm roots into business and civil society, then the enormous effort and resources expended to set up a WEO will be a poor investment.

5. WEO Membership

The advent of a WEO would offer an opportunity to establish conditions for membership greater than statehood. The U.N. system has tended not to do this, and it may be impractical to do so for a WEO. One possibility, however, would be to require that WEO members agree to good environmental governance principles such as those in the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters.¹⁰² This Convention went into force in October 2001 and has been lauded by the Secretary-General Kofi Annan as “the most ambitious venture in environmental democracy undertaken under the auspices of the United

100. For background on the IUCN, see MARTIN HOLDGATE, *THE GREEN WEB, A UNION FOR WORLD CONSERVATION* (1999).

101. *Implementing Agenda 21: Report of the Secretary-General*, U.N. ESCOR 17th Comm., 2nd Sess., ¶ 170, U.N. Doc. No. E/CN.17/2002/PC.2/7 (2001).

102. Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, June 25, 1998, 38 I.L.M. 517, available at <http://www.unece.org/env/pp/treatytext.htm>.

Nations."¹⁰³ Because Aarhus is a regional convention, it would be inappropriate for a WEO to require that governments subscribe to the exact provisions of that Convention.

Even if no substantial conditions were set for membership, the specialized agency approach would require governments to ratify a WEO treaty in order to join. This procedural requirement could serve a basis for some solidarity in the WEO since every member government would have taken a positive action to join the WEO Community.

D. WEO's Relationship to the MEAs

The most complex and central issue involving the proposed WEO is its relationship to the MEAs. UNEP already serves as a secretariat to some of the MEAs, and so a WEO would have at least that function, but a driving force behind the WEO proposals is that the new organization should have greater responsibilities for coordinating MEAs than UNEP now does. To give UNEP some credit, however, it began convening meetings to coordinate the MEAs after the Rio Summit.

Two distinct though interrelated issues need to be considered. First, what role should the WEO have with respect to the legal obligations in the MEAs? At the maximum, one could imagine a recodification of international environmental law in which treaties on the same topic are grouped together, duplicative law eliminated, conflicting law reconciled, and eventually the hundreds of MEAs are reduced to a single code. Second, what role should the WEO have with respect to governance within each MEA consisting of conferences of the parties, subsidiary bodies, a commission, and the secretariat? At the maximum, one could imagine implementing French President Jacques Chirac's suggestion that UNEP "be given the task of federating the scattered secretariats of the great conventions, gradually establishing a World Authority, based on a general convention that endows the world with a uniform doctrine."¹⁰⁴ One month before Chirac's speech, the Task Force on Environment and Human Settlements had pointed to the possibility of establishing clusters of MEAs in which the MEA sec-

103. Press Release, UNECE, *Environmental Rights Not a Luxury* (Oct. 29, 2001), at <http://www.unece.org/press/pr2001/01env15e.htm>.

104. *French President Voices Support for UNEP*, 33 ENVTL. SCI. & TECH. 24 (1999).

retariats would be fused and an umbrella convention would be negotiated to cover each cluster.¹⁰⁵

The first issue, codification, is daunting, yet progress may be possible. While the differences in parties for each environmental treaty would hold back achievement of general environmental law, some integration could be pursued following the steps of the ILO. For example, the ILO Declaration on Fundamental Principles and Rights at Work (1998) sets out a list of fundamental principles that all governments subscribe to even if they have not ratified the underlying ILO Conventions.¹⁰⁶ The ILO publishes a compilation of its conventions with a subject matter classification.¹⁰⁷ This provides, in one single reference series, a picture of international labor law.

The second issue, the role of the WEO with respect to the governance of the MEAs, has drawn a great deal of attention, and there is now considerable support for the idea of setting up clusters of MEAs in order to promote better coordination among related agreements. Clustering obviously would work better if the MEAs were co-located, but some coordination could probably be achieved by defining the cluster and promoting new linkages among the Secretariats and MEA subsidiary entities. Relocation would exact a policy cost in the loss of the alliance between the MEA and its "host" state.

The different membership in the MEAs should not be a barrier to a common organizational structure. In the ILO, the membership in each convention varies, yet the ILO provides a common mechanism for technical assistance, compliance review, and dispute settlement. In the WIPO, each treaty has a different set of parties, but the WIPO provides overall housekeeping functions and also promotes new negotiations among WIPO members.¹⁰⁸ In the WTO, there are some plurilateral agreements (e.g., government procurement) with limited membership that are neverthe-

105. Task Force Report, *supra* note 67, Recommendation 2(d).

106. See INT'L LABOR ORG., ILO Declaration on Fundamental Principles and Rights at Work, *at* <http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm> (June 1998).

107. INT'L LABOR ORG., INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS (1996).

108. Convention Establishing the World Intellectual Property Organization, art. 4, July 14, 1967, 21 U.S.T. 1749, 828 U.N.T.S. 3.

less part of the WTO.¹⁰⁹

If the WEO undertakes clustering, it should try to include all major MEAs, not just those associated with UNEP. A recent paper on MEAs prepared by UNEP for the Open-Ended Intergovernmental Group limits its analysis to those MEAs associated with UNEP,¹¹⁰ but this seems narrow-minded. The paper does include (in Table 4) a broader list of treaties, but this list leaves off important agreements on birds, turtle protection, seals, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the Aarhus Convention, and others.¹¹¹

Von Moltke has suggested two approaches to clustering of environmental regimes—one by problem structure and the other by institutions that occur in every environmental regime.¹¹² Some examples of the first type are a conservation cluster and a global atmosphere cluster, while the second includes science assessment and implementation review. Von Moltke's analysis is helpful in focusing on the two ways that MEAs can be concatenated. A successful WEO should try to achieve both.

The last issue to consider is how the WEO should embark upon the task of providing a more coherent structure for the MEAs. As Juma noted, "Secretariats of conventions cannot be combined without the approval of their respective governing bodies. Advocates of the new agency have not indicated how they plan to deal peacefully with the divergent governing bodies."¹¹³

Juma's challenge deserves an answer, so let me suggest one. The WEO can simply open the door to the MEAs and invite them to cooperate with the WEO and consider joining the WEO's umbrella. Since all of the parties to an MEA will also be parties to the WEO, one can anticipate that many MEAs will accept this invitation. The Charter of the International Trade Organization (ITO) provides a precedent for this open door approach.¹¹⁴ Although the

109. Agreement Establishing the World Trade Organization, Apr. 15, 1994, art. II:3, 33 I.L.M. 1144.

110. *International Environmental Governance: Multilateral Environmental Agreements (MEAs)*, U.N. Environment Programme, Open-Ended Intergovernmental Group of Ministers or their Representatives on International Environmental Governance, ¶ 7, U.N. Doc. UNEP/IGM/INF/3 (2001). The Open-Ended Group held its final meeting in February 2002.

111. *Id.* ¶ 19 & Table 4.

112. Von Moltke, *supra* note 66, at 16–22.

113. Juma, *Perils*, *supra* note 28, at 15.

114. Havana Charter for an International Trade Organization, March 24, 1948, *available*

1948 Charter did not go into effect, one of its provisions established a procedure for an intergovernmental organization concerned with matters within the scope of the Charter to transfer all or part of its functions and resources to the ITO, or to bring itself under the supervision or authority of the ITO.¹¹⁵ This precedent reveals a spectrum of possibilities for how MEAs could relate to the WEO. Each MEA could work out its own initial arrangement, although over time, if the WEO is successful, one might anticipate more convergence toward an optimal relationship.

E. Orientation Issues

Designers of a WEO will need to consider three basic issues of orientation. The first is whether to broaden the organization's functions to include development as well as environmental programs. Second, should the WEO focus solely on global problems? Third, should the WEO have operational functions?

1. WEO vs. WSDO

Although a WEO could be very broad, one can imagine setting up an even broader World Sustainable Development Organization (WSDO) to encompass development as well as environment programs. Such an organization might incorporate UNCTAD, the U.N. Development Programme, UNIDO, and the International Fund for Agricultural Development, among others. For those analysts who believe that environment and development should not be considered separately, a WSDO would make sense because it would facilitate a pursuit of those two goals under the mantle of sustainable development.

Nevertheless, the idea that environment and development are inseparable may be wrong.¹¹⁶ In my view, an agency devoted to the concept of sustainable development might shortchange both goals by settling for lessened economic growth and inadequate environmental protection. To be sure, better environmental quality should not be sought in disregard of its effect on the economy (which may be positive or negative), and economic growth should not be pursued in disregard for its effect on the environment

at <http://www.worldtradelaw.net/misc/misctexts.htm>.

115. *Id.*, art. 87.3.

116. Daniel C. Esty, *A Term's Limits*, FOR. POL'Y 74-5 (September/October 2001).

(which may be positive or negative). But the need to consider two objectives linked normatively does not necessarily mean that both should be housed in the same organization.

Furthermore, a meaningful WSDO would need to include the WTO and the World Bank because trade and finance play such a central role in economic development. Yet that reorganization is obviously unrealistic. So, in my view, a WSDO model should be rejected because it would be so incomplete.

2. Global or Non-Global Scope

Esty and Maria Ivanova have suggested that the GEO be limited to "global-scale pollution control and natural resource management issues."¹¹⁷ They contrast "global" problems, such as the protection of the global commons, which should be controlled by a "GEO," with "world" problems, such as drinking water, air pollution, and land management excluded from its jurisdiction.¹¹⁸ Their global versus world terminology is a bit ambiguous but one can distinguish between *global* problems, which require widespread participation to solve, and *shared* problems, which all countries have but some can solve even if others do not. For example, a heavy reliance on government revenue from taxes on trade is a shared problem in many developing countries that makes them resistant to trade liberalization and its concomitant environmental benefits, but unsustainable taxation is not a global problem.¹¹⁹

This aspect of the Esty/Ivanova conception of a WEO/GEO differs from that of other analysts. For example, Runge does not limit the scope of his WEO to global issues. He suggests that it look at irrigation schemes involving the international transfer of water.¹²⁰ Biermann suggests that the WEO should look at outdoor and indoor air pollution.¹²¹

117. DANIEL C. ESTY & MARIA H. IVANOVA, MAKING INTERNATIONAL ENVIRONMENTAL EFFORTS WORK: THE CASE FOR A GLOBAL ENVIRONMENTAL ORGANIZATION 10 (Yale Center for Environmental Law and Policy, Working Paper 2/01, May 2001).

118. *Id.* at 13. In correspondence with the author, Esty explains that (1) public goods theory suggests that responsibility for issues should be taken up on the scale on which they arise and (2) the limited resources at the international level should be devoted to issues that are inherently transboundary in scope.

119. WORLD BANK, 1999 WORLD DEVELOPMENT INDICATORS 242 (2000) (providing data about taxes on trade).

120. Runge, *supra* note 18, at 417.

121. Biermann, *supra* note 38, at 49 (2001).

One problem with a WEO for just the global commons is that any decision about what is or is not global commons is somewhat arbitrary. Is biodiversity to be included? Are ocean fisheries? How about nuclear waste or other toxic waste? Are forests global because of their services to combat climate change, or non-global because they root within national boundaries? Is the Antarctic a regional or global concern? Lines can be drawn but they will remain debatable.¹²²

The Esty/Ivanova approach would seem to preclude a WEO mandate for regional issues like the regional seas programs. Yet it is interesting to note that the Task Force on Environment and Human Settlements suggested that attention by the global environmental Ministers to regional issues would be a good thing. Indeed, the Task Force suggested that the Ministers shift the venue of their meetings from region to region and that regional issues should feature prominently on their agenda.¹²³ One wonders whether there would be enough of a constituency for a GEO that worked exclusively on global problems.

This conundrum about scope has no easy answer. Ideally, the WEO should be given duties that distinguish it from the national environmental agencies that exist in each country in order to avoid duplication. That is an almost impossible standard to meet, however, since all existing international agencies overlay national agencies. The Esty/Ivanova approach may do the best job of avoiding the conundrum because national governments could, in principle, delegate global problems to a global agency. Yet it should be noted that no existing major international agency looks only at global problems. The mandates of the WTO, the ILO, the WHO, the FAO, etc. are to work on problems that each country shares.

3. Policy Versus Operations

Everyone agrees that the WEO should have policy functions, but there is a question of whether it should also have operational functions beyond data collection and dissemination. The operational functions include capacity building (i.e., training for gov-

122. In correspondence with the author, Esty suggests that on issues with a mixed scale, global institutions can support the global dimension and the more localized dimensions can be supported by national governments.

123. Task Force Report, *supra* note 67, Recommendation 13(a).

ernment officials) and assistance to environment-related projects in developing countries.¹²⁴ One option would be to leave capacity building to existing U.N. institutions (such as the United Nations University and UNCTAD) or private institutions (like the LEAD program¹²⁵). Another approach would be for the WEO to do some capacity building to the extent necessary to promote competition among capacity builders.¹²⁶

At this time, there is insufficient attention at the international level to the need for greater investment in environmental infrastructure (e.g., waste water treatment). A WEO, however, could fill this void. The issue of how the WEO should relate to the project activities of the UNDP, World Bank, and the GEF depends to a great extent on what the scope of the WEO would be.

The WTO Doha Ministerial Declaration states that trade ministers "recognize the importance of technical assistance and capacity building in the field of trade and environment . . ."¹²⁷ Whether the WTO will undertake new technical assistance in this area remains unclear, but this WTO statement provides some possibilities for new WTO-U.N. collaboration.¹²⁸

F. WEO Functions

A WEO might have a matrix of functions including: standards and policy setting, market facilitation, dispute settlement, evaluation, planning, data gathering and assessment, information dissemination, scientific research, and compliance. All are important, but in this short survey article, I will address only the first four of

124. Marc A. Levy et al., *Improving the Effectiveness of International Environmental Institutions*, in INSTITUTIONS FOR THE EARTH 397, 404-08 (Peter M. Haas et al eds., 1993); Biermann, *supra* note 20, at 25-26.

125. The United Nations University, established in 1972, conducts regular educational programs for delegates to the U.N. in New York and Geneva. The U.N. Institute for Training and Research was established in 1966. UNCTAD began as an agency in the 1960s and regularly conducts seminars and conferences on sustainable development issues, sometimes in cooperation with UNEP. The LEAD program trains individuals in developing countries on environment and development matters. See <http://www.lead.org/> (last visited Feb. 22, 2002).

126. Esty and Ivanova view capacity building as one of the global functions of the GEO. Esty & Ivanova, *supra* note 117, at 11.

127. Ministerial Declaration, *supra* note 60, ¶ 33.

128. See Steve Charnovitz, *The Environmental Significance of the Doha Decision*, BRIDGES, November/December 2001, at 13, available at <http://www.ictsd.org> (discussing how the WTO might contribute to the Johannesburg Summit).

these functions.

1. Standards and Policy Setting

Some advocates of a WEO emphasize its legislative role in developing norms and setting standards. In that regard, advocates point to the WTO, the ILO, or the new WHO Framework Convention for Tobacco Control.¹²⁹ While these are useful models, the environmental regime is not lacking in policy-setting experience and would probably do better to build on the extensive experience it has developed. Indeed, the environmental regime has been perhaps the most innovative of any regime in using soft law and in building upon it.¹³⁰

2. Market Facilitation

The idea that the environmental regime could help countries exchange economic and environmental commitments is not a new one but it deserves greater attention. In 1991, David Victor proposed that a General Agreement on Climate Change be modeled on the GATT¹³¹ and, in recent work, Whalley & Zissimos have proposed a bargaining-based WEO to facilitate deals struck between parties with interests in particular aspects of the global environment on both the "custody" and "demand" sides.¹³² These ideas should be elaborated and expanded upon in developing strategies for a new WEO.

3. Dispute Settlement

It is sometimes suggested that the environmental regime would benefit from having a dispute settlement system like that of the WTO. Since this WTO-envy is fairly common, let me point out a few reasons why the WTO model would not be right for a WEO. First, the WTO system relies on dispute settlement rather than compliance review. This may be appropriate for a regime in which reciprocity is the central value, but it would not be appro-

129. See <http://tobacco.who.int/> (last visited Feb. 22, 2002).

130. See Paolo Contini & Peter H. Sand, *Methods to Expedite Environment Protection: International Ecostandards*, 66 AM. J. INT'L L. 37 (1972); Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 442-44 (2000).

131. David G. Victor, *How to Slow Global Warming*, 349 NATURE 451, 454-56 (1991).

132. John Whalley & Ben Zissimos, *What Could a World Environmental Organization Do?*, 1 GLOB. ENVTL. POL. 29, 30 (2001).

priate for the environmental regime that has substantive, measurable objectives. A more effective approach would be to expand the compliance review procedures of the MEAs which are more effective because they are not as confrontational as those in the WTO and because they can be directly linked to technical assistance, which is largely absent from the WTO. Second, the WTO system is considered strong because there is a possibility of a trade sanction in the event of non-compliance. Such trade sanctions are counterproductive, however, and injure innocent parties.¹³³ They are counterproductive because they restrict trade in the name of opening it further. The sanctions injure innocent parties because in reality it is people who yearn to trade with each other; states or Members of the WTO do not themselves trade with each other. Third, the WTO model provides for dispute settlement within the WTO. While this internal adjudication model is not used in MEAs, it is used in the U.N. Convention on the Law of the Sea, which has its own International Tribunal.¹³⁴ The MEAs that do provide for dispute settlement typically utilize ad hoc arbitration or adjudication in a forum outside of the MEA.¹³⁵ This includes the International Court of Justice, which has an unused environment chamber. Recently, the Permanent Court of Arbitration established a set of rules for the arbitration of disputes relating to natural resources and the environment.¹³⁶ These arbitral procedures are available to states, intergovernmental organizations, nongovernmental organizations, and private entities.

4. Evaluation

Organizations need regular evaluation that must be carried out externally. For example, if the Secretary-General wants an impar-

133. Steve Charnovitz, *Rethinking WTO Trade Sanctions*, 95 AM. J. INT'L L. 792 (2001).

134. See Richard J. McLaughlin, *Settling Trade-Related Disputes Over the Protection of Marine Living Resources: UNCLOS or the WTO?*, 10 GEO. INT'L ENVTL. L. REV. 29 (1997).

135. See Compliance and Dispute Settlement Provisions in the WTO and in Multilateral Environmental Agreements, Note by the WTO and UNEP Secretariats, WTO Doc. WT/CTE/W/191 (June 6, 2001); Peter H. Sand, *A Century of Green Lessons: The Contribution of Nature Conservation Regimes to Global Governance*, 1 INT'L ENVTL. AGREEMENTS: POL., LAW & ECON. 33, 48-49 (2001) (noting that the dispute settlement clauses in MEAs have not been invoked).

136. *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment*, Permanent Court of Arbitration (June 2001), available at <http://www.pca-cpa.org/EDR/ENRrules.htm>.

tial evaluation of UNEP, then he should not set up a task force with the UNEP Executive Director as Chairman, as the Secretary-General did with the Task Force on Environment and Human Settlements.¹³⁷ This Task Force concluded "that the United Nations system needs a strong and respected UNEP as its leading environmental organization."¹³⁸ By having the UNEP Executive Director as the chair, it was impossible for the Task Force to consider whether UNEP should be terminated and replaced with a different agency.

III. CONCLUSION

This article has sought to promote debate about whether and how governments should set up a WEO. In Part I, the article explains that while some of the arguments for a WEO are not convincing, compelling arguments do exist for a WEO. Current international environmental governance is defective. The article also explains that full centralization of international environmental affairs is impossible, and thus a WEO would entail partial centralization. In Part II, the article discusses how a WEO might be organized, and emphasizes the need for an inclusive approach to participation. The article also examines the key question of how a WEO should attract the MEAs, and suggests that MEAs will want to associate with a well-functioning WEO.

Compared to the status quo, the WEO would improve environmental governance by making it more coherent both internally and externally. Internal coherence can be achieved by better coordination among UNEP, MEA clusters, and other agencies. External coherence involves the interface between the environment and other regimes, such as the WTO (trade and environment), the WHO (health and environment), the ILO (workplace environment), and the Security Council (biological and chemical warfare). On trade and environment, it is clear that both the WTO and the environmental regime have gained from their interaction. For example, the term "MEAs" arose out of the trade and environment debate of the 1990s.

While a WEO would not be guaranteed to have better external coherence than UNEP, it might help if the WEO constitution fo-

137. Task Force Report, *supra* note 67, Appendix I.

138. Task Force Report, *supra* note 67, ¶ 19.

cused on this goal. Not all governments will want to see such coherence however. For example, in the run-up to the WTO Doha Ministerial Conference, the G-77 and China issued a statement which, among various points, warned that "Developing concepts such as global coherence with other intergovernmental organizations like ILO and UNEP should be cautioned against as it may be used to link trade with social and environmental issues for protectionist purposes."¹³⁹

Since the environmental regime comprises not only international organizations but also national environmental agencies, the WEO must interpenetrate national government to increase its influence over policy. For transborder environmental problems (which are a large share of the totality of environmental problems), all agencies must be pulling in the same direction. If national agencies are ineffective, then those failures will be felt outside of the country as well as inside of it. The WEO should respond to this challenge by working to improve environmental law and enforcement, particularly in developing countries.

Another priority should be the relationship between economic and environmental policy at the national and international levels.¹⁴⁰ The WEO needs to have a much greater effectiveness in influencing economic policy than UNEP has had. Some areas of focus should be investment, trade, debt management, taxes, and subsidies.

The forthcoming World Summit in Johannesburg will provide governments an opportunity to establish a stronger institution for global environmental governance. In my view, the existing UNEP is in much need of improvement. I would like to see it replaced by a broader organization, more connected to the MEAs, but I am pessimistic that governments are ready to give more focus and attention to the environment.

139. Declaration of the Group of 77 and China on the Fourth WTO Ministerial Conference at Doha, Qatar, Communication from Cuba, WT/L/124, ¶ 26 (Oct. 24, 2001).

140. One idea that has been floated is to use the new term "ecology" to describe the nexus between economics and ecology. See Steve Charnovitz, *Living in an Ecolonomy: Environmental Cooperation and the GATT*, Pacific Basin Research Center, Kennedy School of Government, April 1994; M.K. Rai, *Ecolonomy—An Emerging Discipline for Sustainable Development*, 1 *ECOL., ENV'T & CONSERVATION* 125 (1995).